IBA ICC MOOT COURT COMPETITION IN THE ENGLISH LANGUAGE

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THE APPEALS CHAMBER

Case before the International Criminal Court (ICC):

Prosecutor v. Corlis Valeron of the Republic of Regale

The Defense Counsel's Submission in the Appeal from the Pre-Trial Chamber's Decision on Confirmation of Charges against Defendant Corlis Valeron of the Republic of Regale

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LIST OF ABBREVIATIONS

Art.	Article
Cartagena Protocol	Cartagena Protocol on Biosafety to the Convention on Biological Diversity
CEO	Chief Executive Officer
Doc	Document
e.g.	*exempli gratia* (for example)
ECHR	European Convention on Human Rights
ed./eds.	editor/editors
edn.	edition
ENMOD-Convention	Convention on the Prohibition of Environmental Modification Techniques
EoC	Elements of Crimes
et al.	*et alii/et aliae* (and others)
fn.	footnote
IBA	International Bar Association
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ Rep	International Court of Justice Reports
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia

IIM	International Investigative Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for International Crimes Committed in the State of Giskar
ILC	International Law Commission
mn.	margin number
no.	number
OBA	Operation Bug Attack
OTP	Office of the Prosecutor
p./pp.	page/pages
PCA	Permanent Court of Arbitration
PTC	Pre-Trial Chamber
Res.	Resolution
RPE	Rules of Procedure and Evidence
RS	Rome Statute of the International Criminal Court
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGA Res. 377(V)	United Nations General Assembly 'Uniting for Peace' Resolution 377(V) of 1950
UNGA Res. ES-11/2	United Nations General Assembly Resolution ES.11/2 of 9 April 2022
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
v.	*versus* (against)
VCLT	Vienna Convention on the Law of Treaties
VP	Vice President

INDEX OF AUTHORITIES

CASES

INTERNATIONAL CRIMINAL COURT

1. *Prosecutor v. Bahar Idriss Abu Garda* (Decision on the Confirmation of Charges) ICC-02/05-02/09-243-Red (08.02.2010) **[*Abu Garda* Charges]**

2. *Prosecutor v. Omar Hassan Al-Bashir* (Joint Concurring Opinion of Judges Eboe-Osuji et al.) ICC-02/05-01/09-397-Anx1 (06.05.2019) **[Al-Bashir Concurring Opinion]**

3. *Prosecutor v. Omar Hassan Ahmad Al-Bashir* (Judgment in the Jordan Referral re Al-Bashir Appeal) ICC-02/05-01/09-39-Corr (06.03.2019) **[Al-Bashir Appeal]**

4. *Prosecutor v. Omar Hassan Ahmad Al-Bashir* (Prosecution Response to the Observations of Eleven Amici Curiae) ICC-02/05-01/09-369 (16.07.2018) **[*Al-Bashir* Observations]**

5. *Prosecutor v. Ahmad Al Faqi Al Mahdi* (Decision on the confirmation of charges against Ahmad Al Faqi Al Mahdi) ICC-01/12-01/15-84-Red (24.03.2006) **[*Al Mahdi* Charges]**

6. *Prosecutor v. Jean-Pierre Bemba Gombo* (Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo) ICC-01/05-01/08-424 (15.06.2009) **[*Bemba* Charges]**

7. *Prosecutor v. Laurent Gbagbo* (Victims Counsel Response) ICC-02/11-01/15-1206-Red (28.09.2018) **[*Gbagbo* Victims Response]**

8. *Prosecutor v. Paul Gicheru* (Request to Exclude Audio-Recordings Collected in Violation of Part 9 of the Statute) ICC-01/09-01/20-249-Red2 (01.03.2022) [***Gicheru* Request]**

9. *Prosecutor v. Germain Katanga* (Judgment pursuant to article 74 of the Statute) ICC-01/04-01/07-3436-tENG (07.03.2014) **[*Katanga* Judgment]**

10. *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* (Decision on the confirmation of charges) ICC-01/04-01/07-717 (30.09.2008) **[*Katanga/Ngudjolo* Charges]**

11. *Prosecutor v. Thomas Lubanga Dyilo* (Judgment pursuant to Article 74 of the Statute) ICC-01/04-01/06-2842 (14.03.2012) **[*Lubanga* Judgment]**

12. *Prosecutor v. Thomas Lubanga Dyilo* (Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled 'First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81') ICC-01/04-01/06-773 (14.12.2006) **[*Lubanga* Appeal]**

13. *Prosecutor v. Thomas Lubanga Dyilo* (Decision on the confirmation of charges) ICC-01/04-01/06-803-tEN (29.01.2007) **[*Lubanga* Charges]**

14. *Prosecutor v. Callixte Mbarushimana* (Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011) ICC-01/04-01/10-514 (30.05.2012) **[*Mbarushimana* Judgment]**

15. *Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta, Mohammed Hussein Ali* (Document in Support of Appeal on behalf of Uhuru Muigai Kenyatta and Francis Kirimi Muthaura pursuant to Article 82(1)(a) against Jurisdiction in the 'Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute') ICC-01/09-02/11-399 (14.02.2012) **[*Muthaura et al.* Document]**

16. *Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali* (Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute) ICC-01/09-02/11-382-Red (26.01.2012) **[*Muthaura et al.* Charges]**

17. *Prosecutor v. William Samoeiruto, Henry Kiprono Kosgey and Joshua Arap Sang* (Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute) ICC-01/09-01/11-373 (23.01.2012) **[*Ruto et al.* Charges]**

18. *Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona* (Decision on the Prosecution' Request to Use Anonymised Summaries of Witness Statements) ICC-01/14-01/18-261-Red2 (04.02.2020) **[*Yekatom et al. Decision]***

19. *Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar* (Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar) ICC-01/19-27 (14.11.2019) **[*Bangladesh/Myanmar* Authorisation]**

INTERNATIONAL COURT OF JUSTICE

20. *Case concerning Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v. United States of America*) (Merits) [1986] ICJ Rep 14 **[*Military and Paramilitary Activities in and against Nicaragua*]**

21. *Certain Expenses of the United Nations* (Advisory Opinion) [1962] ICJ Rep 151 **[*Certain Expenses*]**

22. *East Timor Case (Portugal v. Australia)* (Judgement) [1995] ICJ Rep 90 **[*East Timor Case*]**

23. *Jurisdictional Immunities of the State* (*Germany v. Italy: Greece intervening*) (Judgement) [2012] ICJ Rep 2012 **[*Jurisdictional Immunities*]**

24. *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 679 **[*Legality of the Threat or Use of Nuclear Weapons*]**

25. *North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)* (Judgment) [1969] ICJ Rep 3 **[*North Sea Continental Shelf Cases*]**

26. *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)* (Judgement) [1966] ICJ Rep 6, 50 **[*South West Africa Case*]**

EUROPEAN COURT OF HUMAN RIGHTS

27. *Doorson v. Netherlands* (Judgement) ECtHR Application No: 20524/92 (20.02.1996) **[*Doorson v. Netherlands*]**

28. *Unterpertinger v. Austria* (Judgement) ECtHR Application No: 9120/80 (24.11.1986) **[*Unterpertinger v. Austria*]**

29. *Kostovski v. Netherlands* (Judgement) ECtHR Application No: 11454/85 (20.11.1989) **[*Kostovski v. Netherlands*]**

INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

30. *Prosecutor v. Tihomir Blaškić* (Judgement) IT-95-14-A (29.07.2004) **[*Blaškić* Appeal]**

31. *Prosecutor v. Tihomir Blaškić* (Judgement) ICTY-IT-95-14-T (30.03.2000) **[*Blaškić* Judgement]**

32. *Prosecutor v. Slobodan Milošević* (Decision on Admissibility of Prosecution Investigator's Evidence) ICTY-IT-02-54-AR73.2 (30.09.2002) **[*Milošević* Admissibility]**

33. *Prosecutor v. Enver Hadžihasanović and Amir Kubura* (Judgement) ICTY-01-47-T (15.03.2006) **[*Hadžihasanović/Kubura* Judgement]**

34. *Prosecutor v. Dario Kordić and Mario Čerkez* (Judgement) IT-95-14/2-T (26.02.2001) **[*Kordić/Čerkez* Judgement]**

35. *Prosecutor v. Radislav Krstić* (Judgement) IT-93-33-T (02.08.2001) **[*Krstić* Judgement]**

36. *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic* (Decision on Motion for Acquittal) IT-96-23 & IT-96-23/1 (03.07.2000) **[*Kunarac et al.* Acquittal]**

37. *Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić and Vladimir Šantić, also known as 'Vlado'* (Judgement) IT-95-16-T (14.01.2000) **[*Kupreškić et al.* Judgement]**

38. *Prosecutor v. Duško Tadić* (Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction) IT-94-1-A (02.10.1995) **[*Tadić Appeal*]**

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

39. *The Prosecutor v. André Rwamakuba* (Decision on Joint Criminal Enterprise to the Crimes of Genocide) ICTR-98-44-AR72.4 (22.10.2004) **[*Rwamakuba* Decision]**

EXTRAORDINARY CHAMBERS IN THE COURT OF CAMBODIA

40. *Prosecutor v. Nuon Chea and Khieu Samphan* (Judgement) 002/19-09-2007/ECCC/TC (07.08.2014) **[*Chea/Samphan* Judgement]**

DOMESTIC JUDICIARY

41. *Reference re Secession of Quebec* [1998] 2 SCR 217 **[*Secession Quebec Case*]**

42. *In re Broussalian Case* (Italy, Court of First Instance, 15 March 1937) Annual Digest, 1935 – 1937, case no. 47 **[*In re Broussalian Case*]**

43. *In re Simi* (Italy, Court of First Instance, 20 February 1937) Annual Digest, 1935 – 1937, case no. 46 **[*In re Simi Case*]**

INTERNATIONAL ORGANIZATIONS' DOCUMENTS

INTERNATIONAL CRIMINAL COURT

44. Elements of Crimes, ICC-PIDS-LT-03-002/11_Eng (ICC 2011) **[EoC]**

45. Rules of Procedure and Evidence, ICC-PIOS-LT-03-004/19_Eng (ICC 2019) **[RPE]**

UNITED NATIONS

46. United Nations General Assembly, Human Rights Council Resolution 49/26 'Situation of human rights in Belarus in the run-up to the 2020 presidential election and its aftermath' (2022), UN Doc A/HCR/RES/49/25 (07.04.2022) **[UNGA HCR Res. 49/26]**

47. United Nations General Assembly, Human Rights Council Resolution 49/1 'Situation of human rights in Ukraine stemming from the Russian aggression' (2022), UN Doc A/HRC/RES/49/1 (07.03.2022) **[UNGA HCR Res. 49/1]**

48. United Nations General Assembly, Human Rights Council Resolution 47/21 'Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers through transformative change for racial justice and equality' (2021), UN Doc A/RES/47/21 (26.07.2021) **[UNGA HCR Res. 47/21]**

49. United Nations General Assembly, Resolution 71/248 'International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011' (2017), UN Doc A/RES/71/248 (11.01.2017) **[UNGA Res. 71/248]**

50. ILC, 'Report of the International Law Commission of its fifty-eighth session', UN Doc A/61/10 (01.05.-09.06 and 03.07-11.08.2006) **[UN Doc A/61/10]**

51. ILC, 'Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries', UN Doc A/CN.4/SER.A/2001/Add.1 (Part 2) (23.04.–01.06. and 02.07.–10.08.2001) **[UN Doc A/CN.4/SER.A/2001/Add.1 (Part 2)]**

52. ILC, 'Report of the International Law Commission on the work of its forty-third session', UN Doc A/46/10 (29.04-19.07.1991) **[UN Doc A/46/10]**

53. United Nations General Assembly Resolution 25/2625 'The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States', UN Doc A/RES/25/2625 (24.10.1970) **[UN Doc A/RES/25/2625]**

54. United Nations General Assembly, Resolution 377(V) 'Uniting for Peace' (1950), UN Doc A/RES/377 (03.11.1950) **[UNGA Res. 377(V)]**

55. United Nations General Assembly, Resolution 217 (III) 'Universal Declarations of Human Rights', UN Doc A/RES/217 (III) (10.12.1948) **[UDHR]**

INTERNATIONAL COMMITTEE OF THE RED CROSS ADVISORY SERVICE

56. International Committee of the Red Cross Advisory Service '1976 Convention on the Prohibition of Military or any Hostile Use of Environmental Modification Techniques' (01/2003) **[ICRC (2003)]**

DOMESTIC LEGISLATION

57. Criminal Code of the Republic of Armenia (adopted 18.04.2003) **[Armenia Criminal Code]**

58. Criminal Code of the Republic of Belarus (adopted 19.07.1999) **[Belarus Criminal Code]**

59. French Environmental Code (22.08.2021) **[French Environmental Code]**

60. Criminal Code of Georgia (adopted 27.07.1999) **[Georgia Criminal Code]**

ARTICLES

61. Antonio Cassese, 'The Statute of the International Criminal Court: Some Preliminary Reflections' (1999) 10 European Journal of International Law, pp. 144−171 **[Cassese (1999)]**

62. Eliana Teresa Cusato, 'Beyond Symbolism: Problems and Prospects with Prosecuting Environmental Destruction before the ICC' (2017) 15 Journal of International Criminal Justice, pp. 491−507 **[Cusato (2017)]**

63. Chile Eboe-Osuji, 'Crimes Against Humanity: Directing Attacks Against A Civilian Population' (2008) 2 African Journal of Legal Studies, pp. 118−129 **[Eboe-Osuji (2008)]**

64. Günther Handl, 'Territorial Sovereignty and the Problem of Transnational Pollution' (1975) 69 The American Journal of International Law, pp. 50─76 **[Handl (1975)]**

65. Mitsue Inazumi, 'The Meaning of the State Consent Precondition in Art. 12(2) of the Rome Statute of the ICC' (2002) 49 Netherlands International Law Review, pp. 159─193 **[Inazumi (2002)]**

66. Marte Jervan, 'The Prohibition of Transboundary Environmental Harm. An Analysis of the Contribution of the International Court of Justice to the Development of the No-harm Rule' (2014) PluriCourts Research Paper, pp. 1─150 **[Jervan (2014)]**

67. Phillipe Kirsch and John T. Holmes, ‘The Rome Conference on an International Criminal Court’ (1999) 93 American Journal of International Law, pp. 2─12 **[Kirsch/Holmes (1999)]**

68. Michael A. Newton, ‘How the International Criminal Court Threatens Treaty Norms’ (2016) 49 Vanderbilt Journal of Transnational Law, pp. 371–431 **[Newton (2016)]**

69. Payal Patel, **‘**Expanding Past Genocide, Crimes Against Humanity, and War Crimes: Can an ICC Policy Paper Expand the Court’s Mandate to Prosecuting Environmental Crimes?’ (2016) 14 Loyola University Chicago International Law Review, pp. 175–197 **[Patel (2016)]**

70. Rod Rastan, ‘The Jurisdictional Scope of Situations Before the International Criminal Court’ (2012) 23 Criminal Law Forum, pp. 1–34 **[Rastan (2012)]**

71. Leila Nadya Sadat and Richard Carden, ‘The New International Criminal Court: An Uneasy Revolution’ (2000) 88 Georgetown Law Journal, pp. 381–474 **[Sadat/Carden (2000)]**

72. Oscar Schachter, ‘The Emergence of International Environmental Law’ (1991) 44 Journal of International Affairs, pp. 457–470 **[Schachter (1991)]**

73. Michael P. Scharf, ‘The ICC’s Jurisdiction over Nationals of Non-Party States’ (2001) 64 Law and Contemporary Problems, pp. 68–117 **[Scharf (2001)]**

74. Carsten Stahn, ‘Response: The ICC, Pre-Existing Jurisdictional Treaty Regimes, and the Limits of the Nemo Dat Quod Non Habet Doctrine’ (2016) 49 Vanderbilt Journal of Transnational Law, pp. 443–452 **[Stahn (2016)]**

75. Stefan Talmon, ‘The Legalizing and Legitimizing Function of U.N.G.A. Resolutions’ (2014) 108 American Journal of International Law, pp. 123–128 **[Talmon (2014)]**

76. Mara Tignino and Christian Bréthaut, ‘The role of international case law in implementing the obligation not to cause significant harm’ (2020) 20 International Environmental Agreement, pp. 631–648 **[Tignino/Bréthaut (2020)]**

77. Jure Vidmar, ‘Conceptualizing Declarations of Independence in International Law’ (2012) 32 Oxford Journal of Legal Studies, pp. 153–177 **[Vidmar (2012)]**

78. Silja Vöneky, ‘Limiting the Misuse of the Environment during Peacetime and War – The ENMOD Convention’ (2020) Freiburger Informationspapiere zum Völkerrecht und Öffentlichen Recht, pp. 1–19 **[Vöneky (2020)]**

79. Markus Wagner, 'The ICC and its Jurisdiction' (2003) 7 Max Planck Yearbook of United Nations, pp. 409–512 **[Wagner (2003)]**

BOOKS

80. Kai Ambos (ed.), *Rome Statute of the International Criminal* (4th edn., Beck Nomos Hart, 2022)

- Claus Kreß/Kimberly Prost 'Article 86' **[Kreß/Prost in Ambos (2022)]**
- Donald K. Piragoff/Roger S. Clark 'Article 69' **[Piragoff/Clark in Ambos (2022)]**
- William A. Schabas/Giulia Pecorella 'Article 12' **[Schabas/Pecorella in Ambos (2022)]**

81. Bruce Broomhall, *International Justice, and the International Criminal Court,* (2nd edn., OUP 2003) **[Broomhall (2003)]**
82. Monique Cormier, *The Jurisdiction of the International Criminal Court over Nationals of Non-States Parties* (CUP 2020) **[Cormier (2020)]**
83. Olivier Corten and Pierre Klein (eds.), *The Vienna Convention on the Law of Treaties Volume I* (OUP 2011)

- Eric David 'Article 34' **[David in Corten/Klein (2011)]**

84. James Crawford, *The Creation of States in International Law* (2nd edn., OUP 2007) **[Crawford (2007)]**
85. Oliver Dörr and Kirsten Schmalenbach (eds.) *Vienna Convention on the Law of Treaties* (2nd edn., Springer 2018)

- Alexander Proelss 'Article 34' **[Proelss in Dörr/Schmalenbach (2018)]**

86. Jörg Fisch, *Das Selbstbestimmungsrecht der Völker* (C.H.Beck 2010) **[Fisch (2010)]**
87. Zue Hanqin, *Transboundary Damage in International Law*, (CUP 2003) **[Hanqin (2003)]**
88. Hans Kelsen, *The Law of the United Nations* (Lawbook Exchange 1951) **[Kelsen (1951)]**
89. Marcelo G. Kohen, *Secession: International Law Perspectives* (CUP 2006)
    - Georg Nolte, 'Secession and external Intervention' **[Nolte in Kohen (2006)]**
90. Daniel P. O'Connell, *State Succession in Municipal Law and International Law* (CUP 1967) **[O'Connell (1967)]**

91. Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus, Nikolai Wessendorf (eds.), *The Charter of the United Nations, Volume I* (3rd edn., OUP 2012)

- Daniel-Erasmus Khan 'Article 22' **[Khan in Simma et al. (2012)]**
- Eckart Klein/ Stefanie Schmahl 'Article 10' **[Klein/Schmahl in Simma et al. (2012)]**
- Stefan Oeter 'Self-Determination' **[Oeter in Simma et al. (2012)]**

92. Carsten Stahn, *A Critical Introduction to International Criminal Law* (CUP 2019) **[Stahn (2019)]**

TREATIES AND CONVENTIONS

93. Cartagena Protocol on Biosafety to the Convention on Biological Diversity (adopted 29.01.2000, entered into force 11.09.2003) 2226 UNTS 208 **[Cartagena Protocol]**

94. Convention on the Law of the Non-Navigational Uses of International Watercourses (adopted 21.05.1997, entered into force 17.08.2014) 2999 UNTS 120 **[CLNNUIW]**

95. Convention on the Prohibition of Military or any other Hostile use of Environmental Modification Technique (adopted 10.12.1976, entered into force 05.10.1978) 1108 UNTS 151 (ENMOD) **[ENMOD-Convention]**

96. European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols no. 11 and 14 (adopted 04.11.1950, entered into force 03.09.1953) ETS 5 **[ECHR]**

97. Convention on the Prevention and Punishment of the Crime of Genocide (adopted 09.12.1949, entered into force 12.01.1951) 78 UNTS 277 **[Genocide Convention]**

98. International Covenant on Civil and Political Rights (adopted 16.12.1966, entered into force 23.03.1976) 999 UNTS 171 **[ICCPR]**

99. Rome Statute of the International Criminal Court (adopted 17.07.1998, entered into force 01.07.2002) 2187 UNTS 3 **[RS]**

100. Vienna Convention on the Law of Treaties (adopted 23.05.1969, entered into force 27.01.1980) 1155 UNTS 331 **[VCLT]**

101. Convention on the Protection and Use of Transboundary Watercourses and International Lakes (adopted 17.03.1992, entered into force 16.10.1996) 1936 UNTS 269 **[Water Convention]**

IBA ICC MOOT COURT COMPETITION DOCUMENTS

102. *Prosecutor v. Corlis Valeron of the Republic of Regale* (Confirmation of Charges) Pre-Trial Chamber VI 2023 ICC Moot Court Competition **[Case]**

103. Letter from the Foreign Minister of Giskar (Declaration under Art. 12(3) RS) **[Appendix 2]**

104. International Investigative Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for International Crimes Committed in the State of Giskar (IIM report) **[Appendix 3]**

MISCELLANEOUS

105. Merriam-Webster Dictionary
   – "Call upon", <*https://www.merriam-webster.com/dictionary/call*> (accessed 27.02.2023) **["call upon" in Merriam-Webster Dictionary (2023)]**

106. Oxford English Dictionary
   – "To be", <*https://www.oed.com/view/Entry/16441?rskey=SyJ46P&result=4&isAdvanced=false#eid*.> (accessed 03.03.2023) **["To be" in Oxford Dictionary (2023)]**

107. Parties to the ENMOD-Convention: <*https://treaties.unoda.org/t/enmod*> (accessed 05.03.2023) **[Parties ENMOD-Convention]**

108. Parties Genocide Convention: <*https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-1&chapter=4&clang=_en*> (accessed 06.03.2023) **[Parties Genocide Convention]**

109. Parties to the VCLT: *https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=_en* (accessed 06.03.2023) **[Parties VCLT]**

110. Stop Ecocide Foundation, *Independent Expert Panel for the Legal Definition of Ecocide* (06.2021) **[Stop-Ecocide-Foundation]**

STATEMENT OF FACTS

Factual Background

1. The States involved are Giskar and Regale. Giskar is a developing State, whose economy is based on agriculture (crops, mineral extraction etc.). Regale, an industrialized country, is home to Karaxis. Karaxis is one of the world's leading biotech companies that specializes in the development of pest-resistant seeds/crops, and is wholly owned and controlled by Regale.

2. The alleged criminal acts occurred in the Golden Lowlands, which was a region of Giskar that became independent on 15 January 2021, entered into a Merger Agreement with Regale, and became part of Regale on 15 May 2021. Art. VI of the Giskar Constitution allows any region of Giskar to secede from it 60 days after attaining a 2/3s majority. According to the information provided by the IIM report, Karaxis personnel allegedly implemented "Operation Bug Attack" (OBA) from March 2019 to September 2020. Employees involved in the operation were required to sign non-disclosure agreements. The operation involved the repeated release of bioengineered bugs over the Golden Lowlands. These bugs were only vulnerable to the patented Bt protein that only the seeds/crops of Karaxis produced and could thus not be killed by conventional pesticides. Allegedly, the objectives of OBA were firstly, to significantly suppress farm output in the Golden Lowlands, and secondly, to induce the people of the Golden Lowlands to vote to accede to Regale.

3. The Defendant is Valeron, the CEO of Karaxis, who allegedly ordered the commission and implementation of OBA.

4. OBA supposedly caused 25,000 people to die and additionally resulted in the destruction of 65% of the crops in the Golden Lowlands.

Evidence

5. The Prosecutor solely relies on the IIM report as evidence. The IIM was established by the UNGA on 9 April 2022, after the UNSC resolution was vetoed by a permanent member. The UNGA claims to derive its competence to adopt such a resolution from the UNGA Res. 377(V) of 1950. The IIM's underlying resolution, UNGA Res. ES-11/2 of 9 April 2022, gave the IIM the mandate to "collect and analyze evidence of violations of international criminal law, and to prepare case files and draft indictments for prosecution before the [Court]". It further provided that "all States are to cooperate fully with the IIM". During the UNGA session, the UN Under-Secretary-General for Legal Affairs officially opined concerns

about the scope of the mandate as it does not fall within the authority of the UNGA. According to the IIM report, there is supposed to be credible evidence that the Defendant committed crimes against humanity. The IIM report is based on information provided by Kole, a former Executive VP of Karaxis, who has subsequently gone missing.

Procedural Background

6. On 10 April 2022, Giskar lodged a declaration according to Art. 12(3) RS, accepting the Court's jurisdiction for international crimes committed by the Defendant and others on its territory, including the region of the Golden Lowlands.

7. On 10 May 2022, Regale declined to cooperate in the Court's investigation.

8. Following the declaration, on 20 May 2022, the Prosecutor requested the confirmation of charges against the Defendant, for jointly committing a form of "ecocide" according to Art. 7(1)(k), 25(3)(a) RS. The Defendant voluntarily appeared remotely on 21 July 2022 before the Court.

9. PTC VI confirmed the charges against the Defendant by a 2/1 vote. The PTC granted the Defendant's request for leave to appeal on 15 September 2022.

ISSUES

-I-

Whether the PTC erred in holding that the State of Giskar's acceptance of jurisdiction concerning international crimes committed in the region of the Golden Lowlands was valid given that the territory was no longer part of Giskar at the time it lodged its Art. 12(3) RS declaration with the Registrar?

-II-

Whether the PTC erred in holding that it had subject matter jurisdiction in this case under Art. 7(1)(k) RS?

-III-

Whether the PTC erred in holding that there was sufficient evidence to confirm charges against the Defendant based solely on the 20 April 2022 Report of the International Investigative Commission whose legitimacy has been challenged by the UN Under-Secretary-General for Legal Affairs?

SUMMARY OF ARGUMENTS

I. THE COURT HAS NO JURISDICTION PURSUANT TO ART. 12(3) RS AS GISKAR'S DECLARATION IS INVALID

A. Giskar's declaration is invalid, since Giskar does not possess the required territorial sovereignty over the *locus delicti*. *Firstly,* a valid declaration requires the accepting State to be the territorial sovereign over the *locus delicti* at the time of the declaration. *Secondly,* Giskar is not the territorial sovereign over the *locus delicti*.

B. *Even if,* the territorial sovereignty over the *locus delicti* at the time of the declaration is irrelevant, Giskar's declaration was invalid, as it lost its territorial jurisdiction due to the secession of the Golden Lowlands.

C. *Lastly,* Giskar's Art. 12(3) RS declaration violates Art. 34 VCLT.

II. THE PTC ERRED IN FINDING THAT IT HAD SUBJECT MATTER JURISDICTION SINCE THE ALLEGED ACTS CANNOT BE PROSECUTED AS "OTHER INHUMANE ACTS" UNDER ART. 7(1)(k) RS

A. *Firstly,* the RS does not envision prosecuting "ecocide" under Art. 7(1)(k) RS.

B. *Secondly*, the release of the bioengineered bugs does not qualify as "other inhumane acts" under Art. 7(1)(k) RS, as there is no rule under customary international law prohibiting crimes against the environment during peace time. *In any case,* the release of the bioengineered bugs does not fall within the scope of the "no-harm-rule". *Even if* the alleged acts constitute a violation of customary international law, the alleged acts are not of a similar character to the other acts set forth in Art. 7(1) RS. *Lastly,* there was no attack against a civilian population, neither conducted by an organization nor pursuant to or in furtherance of a State policy.

III. THE PRESENTED EVIDENCE IS NOT SUFFICIENT TO CONFIRM THE CHARGES PURSUANT TO ART. 61(7)(a) RS

A. *Firstly,* the IIM report is inadmissible pursuant to Art. 69(7) RS, as it has been obtained by a violation of Art. 54(3)(c) RS and its admission is antithetical to and seriously damages the integrity of the proceedings.

B. *Secondly,* the IIM report does not pass the evidentiary threshold enshrined in Art. 61(7)(a) RS, as both the summaries of Kole's information, as well as the IIM's observations, are low in probative value.

I. THE COURT HAS NO JURSDICTION PURSUANT TO ART. 12(3) RS AS GISKAR'S DECLARATION IS INVALID

1. Pursuant to Art. 12(3) RS, a non-party State may, by declaration lodged with the Registrar, accept the jurisdiction of the Court with respect to the crime in question ("accepting State"). According to Art. 12(2)(a) RS, which stipulates the territoriality principle, the crime must have occurred on the territory of the accepting State.[1]

2. Giskar lodged a declaration pursuant to Art. 12(3) RS on 10 April 2022, accepting the Court's jurisdiction for the prosecution of perpetrators of international crimes committed in the territory of Giskar since 1 March 2019 (Appendix 2).

3. Giskar's declaration is invalid. Firstly, **(A.)** Giskar does not possess the required territorial sovereignty over the *locus delicti*. Secondly, **(B.)** even if the accepting State needs to delegate its domestic jurisdiction over the crime when lodging an Art. 12(3) RS declaration, Giskar's declaration was invalid, as it lost its territorial jurisdiction due to the secession of the Golden Lowlands. Lastly, **(C.)** Giskar's Art. 12(3) RS declaration violates Art. 34 VCLT.

A. Giskar does Not Possess the Required Territorial Sovereignty over the *Locus Delicti*

4. Giskar is missing the required territorial sovereignty as firstly, **(i.)** a valid declaration requires the accepting State to be the territorial sovereign over the *locus delicti* at the time of the declaration. Secondly, **(ii.)** Giskar is not the territorial sovereign over the *locus delicti*.

i. A Valid Declaration Requires the Accepting State to be the Territorial Sovereign over the Locus Delicti at the Time of the Declaration

5. The accepting State must be the territorial sovereign over the *locus delicti* at the time of the declaration since the Court has inherent jurisdiction and the accepting State merely authorizes the Court to exercise its jurisdiction on its territory. By ratifying the RS or accepting the Court's jurisdiction pursuant to Art. 12(3) RS, the States authorize the Court to exercise its inherent jurisdiction in lieu of their jurisdictional titles accepted by the RS, namely Art. 12(2)(a), (b) RS.[2] The inherent jurisdiction of the Court is grounded on the

[1] *Bangladesh/Myanmar* Authorisation [25].
[2] Cassese (1999) 160; Sadat/Carden (2000) 412; Scharf (2001) 77; Rastan (2012) 20; Stahn (2016) 448.

universal interest of the international community to prosecute the core crimes of the RS.[3] The Court therefore exercises its jurisdiction on behalf of the international community.[4]

6. The inherent character of the Court's jurisdiction can be deducted from the drafting history of the RS. The "like-minded group" of States wanted to create a strong and independent court.[5] This intention was reflected by the majority of States supporting the German or Korean proposals, which (partially) opted for universal jurisdiction.[6] As part of a package deal to gain the broadest support possible,[7] Art. 12 RS was incorporated as a procedural limitation, or in the words of the RS as a "[p]recondition to the exercise of jurisdiction" to the Court's inherent jurisdiction.[8] Pursuant to Art. 12(2)(a) RS, the crime must have been committed on the territory of the accepting State. Whereby the "territory" under Art. 12(2)(a) RR is that which currently is subject to the sovereignty of the State. Consequently, a valid declaration can only be lodged by the territorial sovereign over the *locus delicti* at the time of the Art. 12(3) RS declaration.

ii. Giskar is Not the Territorial Sovereign over the Locus Delicti

7. The alleged crime took place from March 2019 until September 2020 which putatively involved the release of bioengineered bugs on the Giskar side of the Cascading River, destroying the agriculture of the Golden Lowlands (Appendix 3 [6f.]). Hence the Golden Lowlands are the alleged *locus delicti*.

8. The Golden Lowlands are no longer under the territorial sovereignty of Giskar since their declaration of independence is valid. As a rule of customary international law,[9] all people have the right to determine freely their political status without external interference.[10] This right can be exercised through the secession and unification with a third State, as long as it is based upon the will of the people.[11]

9. The Golden Lowlands lawfully seceded from Giskar as firstly, **(a.)** the secession was held in accordance with Art. VI Giskar Constitution. Secondly, **(b.)** the right to self-determination of the people in the Golden Lowlands was not infringed by any unlawful intervention of another State. Lastly, **(c.)** even if the Golden Lowlands did not lawfully

[3] Inazumi (2002) 166; Stahn (2016) 448.
[4] *Al-Bashir* Appeal [115]; *Al-Bashir* Concurring Opinion [53f., 58, 61].
[5] Kirsch/Holmes (1999) 4; Kaul (2002), p. 596.
[6] Kirsch/Holmes (1999) 9; Schabas/Pecorella in Ambos (2022), Art. 12 [6-9].
[7] Kirsch/Holmes (1999) 10.
[8] Scharf (2001) 77; Sadat/Carden (2000), 413.
[9] *East Timor Case* [29]; *Secession Quebec Case* [114].
[10] UNGA Res 25/2625, p. 123.
[11] UNGA Res 25/2625, p. 124; Fisch (2010), p. 49; Oeter in Simma et al. (2012), Self-Determination [33].

secede from Giskar, the principle of effectivity dictates that the Golden Lowlands are no longer part of Giskar.

a. The Secession was in Accordance with Art. VI Giskar Constitution

10. The right to self-determination does not grant a general right to unilaterally secede from a sovereign State, as this would contradict the stability and territorial integrity of any sovereign State.[12] Yet, when it is permitted within the constitutional framework of the State, it's territorial integrity cannot contradict the process of secession.[13] The right to self-determination requires the decision to secede to reflect the will of the people.[14] The will of the people is confirmed by a procedural arrangement such as a plebiscite or referendum.[15]

11. By virtue of Art. VI Giskar Constitution, any region of Giskar may secede from Giskar 60 days after attaining a 2/3s majority in a plebiscite of the voting-age people of the region (Appendix 3 [2]).

12. The regional government of the Golden Lowlands scheduled a secession plebiscite for 15 November 2020 (Appendix 3 [7]). The plebiscite was approved by a vote of 68% in favor and 32% opposed. Subsequently, a new government was elected and the region proclaimed their independence on 15 January 2021 (Appendix 3 [8]).

13. The plebiscite held represents the will of the majority of the people living in the Golden Lowlands to secede from Giskar. Therefore, the people living in the Golden Lowlands exercised their constitutional right to self-determination in accordance with Art. VI Giskar Constitution.

b. The Right to Self-Determination of the People in the Golden Lowlands was Not violated by any Unlawful Intervention of Another State

14. The principle of non-intervention, which is part of customary international law,[16] stipulates that no State shall directly or indirectly intervene in internal or external affairs of other States.[17] An intervention is wrongful when it uses methods of coercion.[18]

15. Firstly, the alleged attack through bioengineered bugs, which putatively created the severe economic and humanitarian situation in the Golden Lowlands cannot be attributed to Regale. The conduct of private entities can only be attributed to the State, if a private person

[12] Nolte in Kohen (2006), p. 86; Crawford (2007), p. 387; Vidmar (2012) 162.
[13] Crawford (2007), p. 387.
[14] Crawford (2007), p. 387; Fisch (2010), p. 65; Oeter in Simma et al. (2012)], Self-Determination [33].
[15] Fisch (2010), p. 68–70; Oeter in Simma et al. (2012), Self-Determination [33].
[16] *Military and Paramilitary Activities in and against Nicaragua* [202].
[17] UN Doc A/RES/25/2625, p. 123; *Military and Paramilitary Activities in und against Nicaragua* [202, 205].
[18] *Military and Paramilitary Activities in and against Nicaragua* [205].

is either acting on the specific instructions of the State in carrying out the wrongful conduct, or if a private person acts under the State's control.[19] A conduct is under the "State's control" only if the State directed the specific operation.[20] Operations which escape from the State's mission and control cannot be attributed to the State.[21]

16. The operation went beyond the mission of Karaxis. The primary mission of Karaxis is the genetic engineering of pest resistant crops (Appendix 3 [4]). Pest resistant crops prevent an insect-caused destruction of crops and thereby increase agricultural production. In contrast, the purpose of OBA was the exact opposite, namely, to destroy agricultural production. Additionally, Regale did not issue any specific instructions concerning the implementation of OBA. Therefore, the operation went beyond the mission of Karaxis and cannot be attributed to Regale. Furthermore, OBA was not carried out under the control of Karaxis. OBA was allegedly conceived and implemented solely by the Defendant (Case [7], Appendix 3 [5]). The Defendant required all individuals involved in OBA to sign non-disclosure agreements, keeping all aspects of the operation confidential and under penalty of employment termination (Appendix 3 [6]). Thus, the Defendant took numerous, detailed precautions to disguise the implementation of OBA within Karaxis. The fact that the Defendant required certain employees to sign confidentiality agreements, demonstrates that the Defendant selected only a very specific, limited number of individuals within Karaxis to know about the operation. This illustrates that OBA was not under the control of Karaxis, but much more a separate, undercover sub-divisional operation implemented outside of the control of Karaxis. Thus, OBA is an incidental operation which escaped from the mission and control of Karaxis. As the operation was not even under the control of Karaxis, it could also not be attributed to Regale. Consequently, the alleged attack was not carried out by Regale.

17. Secondly, even if there was an independence movement which was financed by Regale (Appendix 3 [7]), this support alone cannot completely nullify the justified wish of the people living in the Golden Lowlands to part ways with Giskar and join Regale. Considering the great suffering and the high death counts of the people, it becomes clear that any support for a political movement which is directed at ending these calamitous circumstances has rather a minor impact on the public sentiment. On the contrary, it was rather the lack of governmental support which led the people of the Golden Lowlands to grow increasingly

[19] UN Doc A/CN.4/SER.A/2001/Add.1 (Part 2), [76], Art. 8 (1).
[20] *Military and Paramilitary Activities in and against Nicaragua* [86]; UN Doc A/CN.4/SER.A/2001/Add.1 (Part 2), [76], Art. 8 (3).
[21] UN Doc A/CN.4/SER.A/2001/Add.1 (Part 2), [76], Art. 8 (8).

disenchanted with the central government, as Giskar was unable to provide any support for the people (Appendix 3 [7]).

18. Therefore, the right to self-determination exercised by the people of the Golden Lowlands through their constitutional right was not violated.

c. Even if the Golden Lowlands did Not Lawfully Secede from Giskar, the Principle of Effectivity Dictates that the Golden Lowlands are No Longer Part of Giskar

19. The principle of effectivity proclaims that an illegal act may eventually acquire legal status if, as a matter of empirical fact, it is recognized on the international plane.[22]

20. The independence of the Golden Lowlands was approved by the IIM, being an international mechanism of the UN (Appendix 3 [8]). Furthermore, no State or other international actor, including the predecessor State Giskar, has challenged the fact that the Golden Lowlands seceded and became independent. Thus, in any case, the Golden Lowlands became an independent State by virtue of the principle of effectivity.

21. Therefore, the Golden Lowlands seceded from Giskar and Giskar is no longer the territorial sovereign over the alleged *locus delicti*.

22. Consequently, the declaration of Giskar under Art. 12(3) RS was invalid.

B. Even if the Territorial Sovereignty over the *Locus Delicti* at the Time of the Declaration is Irrelevant, Giskar's Declaration was invalid, as it lost its Territorial Jurisdiction due to the Secession of the Golden Lowlands

23. Even if an accepting State needs to delegate a corresponding domestic jurisdictional title, as demanded by some,[23] Giskar is missing such a title due to the secession of the Golden Lowlands. Jurisdiction is an attribute to sovereignty.[24] Only the seceding State has adjudicative jurisdiction over crimes committed on its territory, as a logical corollary of sovereignty.[25] The Golden Lowlands successfully seceded from Giskar (*mn.* 21).

24. Therefore, Giskar, as the predecessor State of the Golden Lowlands, lost its territorial jurisdiction over the alleged crime committed in the Golden Lowlands due to their secession.

[22] *Secession Quebec Case* [146].
[23] Newton (2016) 398f.; Cormier (2020), p. 70.
[24] *In re Broussalian Case*, p. 149; O'Connell (1967), p. 171.
[25] *In re Simi Case*, p. 147; *In re Broussalian Case*, p. 149; O'Connell (1967), p. 169.

C. Giskar's Art. 12(3) RS Declaration Violates Art. 34 VCLT

25. The Court's acceptance of Giskar's declaration pursuant to Art. 12(3) RS violates Art. 34 VCLT.

26. According to Art. 34 VCLT, a treaty shall not create obligations for third States. The provision is accepted as customary international law.[26] Any treaty provision indirectly affecting the territorial integrity of a State or the sovereign exercise of territorial State jurisdiction is to be qualified as an indirect legal obligation violating Art. 34 VCLT.[27] This principle is applicable to unilateral declarations.[28]

27. Giskar lodged a declaration over a territory that is no longer in its possession and thereby on behalf of a third State. By lodging a declaration over the territory of the Golden Lowlands, Giskar authorized the Court to exercise territorial jurisdiction over the Golden Lowlands on its behalf. Even though there may be no rule in international law prohibiting the territorial State from voluntarily delegating its sovereign ability to prosecute to the Court,[29] a State cannot allow an international court to exercise jurisdiction over the territory of another State, as this would violate the other State's sovereignty.

28. Therefore, the Court's acceptance of Giskar's declaration violates Art. 34 VCLT. Consequently, the Court has no jurisdiction pursuant to Art. 12(3) RS as Giskar's declaration is invalid.

II. THE PTC ERRED IN FINDING THAT IT HAD SUBJECT MATTER JURISDICTION SINCE THE CHARGED CONDUCT CANNOT BE PROSECUTED AS "OTHER INHUMANE ACTS" UNDER ART. 7(1)(k) RS

29. The charged conduct cannot be prosecuted as a crime against humanity under Art. 7(1)(k) RS, since **(A.)** the release of the bioengineered bugs does not constitute "other inhumane acts". In any case, **(B.)** there was no attack against a civilian population neither committed by an organization, nor pursuant to or in furtherance of a State policy.

A. The Release of the Bioengineered Bugs does not constitute "Other Inhumane Acts"

30. "Other inhumane acts" must be interpreted conservatively to not uncritically expand the scope of crimes against humanity, as it is a final residual category which accommodates forms of inhumane conduct not otherwise prohibited under Art. 7 RS.[30] "Other inhumane

[26] David in Corten/Klein (2011), Art. 34 [4].
[27] Proelss in Dörr/Schmalenbach (2018), Art. 34 [26].
[28] UN Doc A/61/10, p. 379 [9(1)].
[29] Schabas/Pecorella in Ambos (2022), Art. 12 [16].
[30] *Katanga/Ngudjolo* Charges [448]; *Kupreškić et al.* Judgement [563]; *Blaškić* Judgement [206].

acts" according to Art. 7(1)(k) RS, are to be considered as serious violations of customary international law.[31] Serious violations of customary international law only amount to "crimes against humanity" if they are of similar character to the other crimes referred to in Art. 7(1) RS and intentionally cause great suffering, or serious injury to body, mental, or physical health.[32]

31. Firstly, **(i.)** the RS does not envision prosecuting "ecocide" under Art. 7(1)(k) RS, as it would uncritically expand the scope of crimes against humanity. In any case, **(ii.)** the release of the bioengineered bugs does not qualify as a serious violation of customary international law. Even if the alleged acts constitute a violation of customary international law, **(iii.)** these acts are not of a similar character to the other acts set forth in Art. 7(1) RS.

i. The RS does not Envision Prosecuting "Ecocide" under Art. 7(1)(k) RS

32. The RS does not envision prosecuting "ecocide" under Art. 7(1)(k) RS. Crimes against the environment are already specifically punishable when committed during international armed conflicts pursuant to Art. 8(2)(b)(iv) RS. Thus, the drafters of the RS explicitly refrained from punishing crimes against the environment during peace time. The widespread disapproval of a stand-alone crime of "ecocide" is also reflected through the rejection of the ILC's Draft Code. During the preparation of a Draft Code for the Court, the ILC attempted the inclusion of the "crime of willful and severe damage to the environment",[33] which could have established the basis for an international crime of "ecocide". Ultimately, however, this proposal was not retained. The fact that the ILC has already attempted, yet failed to criminalize "ecocide", illustrates that the drafters of the RS explicitly refrained from punishing "ecocide" as a separate crime.

33. "Ecocide" would uncritically expand the scope of crimes against humanity under Art. 7 RS and violate the principle of legality enshrined in Art. 22 RS. As set out in the Preamble of the RS, the Court only sanctions the most serious crimes of international concern. If "ecocide" would be subsumed under Art. 7(1)(k) RS, then "other inhumane acts" would provide a leeway to absorb an overly broad range of criminal behavior and would thereby counter-run the principle of legality pursuant to Art. 22 RS.

34. Consequently, the RS does not envision prosecuting "ecocide" under Art. 7(1)(k) RS.

[31] *Katanga/Ngudjolo* Charges [448].
[32] *Chea/Samphan* Judgement [438].
[33] UN Doc A/46/10, p. 275, Art. 26; Stahn (2019), p. 109.

ii. The Release of the Bioengineered Bugs does not Qualify as a Serious Violation of Customary International Law

35. The release of the bioengineered bugs does not qualify as a serious violation of customary international law. Firstly, **(a.)** there is no rule under customary international law prohibiting crimes against the environment during peace time. In any case, **(b.)** the release of the bioengineered bugs does not fall within the scope of the "no-harm-rule".

a. There is No Rule under Customary International Law prohibiting Crimes against the Environment during Peace Time

36. Norms of customary international law require an extensive and virtually uniform state practice, as well as *opinio iuris*.[34] State practice generally consists of administrative acts, legislations, treaties and decisions of domestic courts.[35] Crimes against the environment lack an internationally applicable framework, as there is neither a uniform, nor an extensive State practice.

37. Firstly, there is no uniform State practice, since there is no unanimous definition of environmental damage. Although there are numerous proposals and treaties that individually sanction crimes against the environment, the existing rules contain significant differences in the key elements of their definitions. To begin with, Art. I of the ENMOD-Convention[36] for example, includes three primary objective elements, namely the "widespread", "long-lasting" and "severe" use of "environmental modification techniques", resulting in the "damage" or "injury to another State Party". Contextually, the scope of the Convention is intended to protect the environment specifically during warfare.[37] Similarly the RS itself, namely Art. 8(2)(b)(iv) RS, is likewise limited to war crimes in its application. Contrary to the ENMOD-Convention however, the term "damage" does not refer to a State Party, but to the environment *per* se. In contrast, the ILC's 1991 Draft Code[38] required the terms "widespread" and "severe" to be used cumulatively. In turn, the "Stop Ecocide Campaign",[39] refers to the terms alternatively, with the additional requirement of an "unlawful" or "wanton" act.

[34] *North Sea Continental Shelf Cases* [77]; *Military and Paramilitary Activities in and against Nicaragua* [207]; *Rwamakuba* Decision [14]; *Hadžihasanović/Kubura* Judgement [254].
[35] *Jurisdictional Immunities* [99].
[36] Art. I ENMOD-Convention.
[37] ICRC (2003); Vöneky (2020) 4.
[38] UN Doc A/46/10, p. 275, Art. 26.
[39] Stop-Ecocide-Foundation.

38. Finally, the Cartagena Protocol, centered on living modified organisms,[40] as well as the "no-harm-rule"[41], both share the common elements of preventing "transboundary movement" or " transboundary harm" to another party. The "no-harm-rule", however, which in contrast is indeed considered to be customary law,[42] remains rather vague and entails a number of substantial uncertainties,[43] as the exact meaning and severity of the term "harm" remains unspecified. Since the current rules contain significant differences in the key elements of their definitions, there are thus no existing rules on environmental damage that constitute uniform State practice.

39. Secondly, there is no extensive State practice, since the existing concepts are not recognized by a sufficient amount of nations. To begin with, merely 78 States are party to the ENMOD-Convention.[44] In comparison, the VCLT[45] and the Genocide Convention[46], which are both indeed reflective of customary law,[47] consist of 116[48] and 152[49] member States, respectively. These comparisons exemplify the scarce participation and hence broad disapproval of the ENMOD-Convention. Further, the ILC's Draft Code and the Stop Ecocide Campaign have received even less (inter)-national recognition, solely France and some Eastern European Countries have applied the term "ecocide" as a basis for their national laws.[50] Finally, the Cartagena Protocol does not constitute extensive State practice, as it has not existed for a significant period of time. Although the Cartagena Protocol is signed by 103 Parties, it only entered into force in 2003.[51]

40. The fact that these initiatives have already attempted to criminalize crimes against the environment, illustrates that environmental crimes currently lack a fundamental, legally binding document that is recognized by a quantifiable amount of nations on an international scale. Thus, the existing initiatives only confirm that State practice of environmental governance is impeded by fragmentation and gaps in the law. Therefore, there is no extensive State practice.

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[40] Art. 4 Cartagena Protocol.
[41] As reflected, e.g., in: Art. 1(2) Water Convention; Art. 7 CLNNUIW; ILC UN Doc A/CN.4/SER.A/2001/Add.1 (Part 2), [98], Art. 3.
[42] *Legality of the Threat or Use of Nuclear Weapons* [29].
[43] Jervan (2014) 114; Tignino/Bréthaut (2020) 632.
[44] Parties ENMOD-Convention.
[45] VCLT.
[46] Genocide Convention.
[47] *Al-Bashir* Observations [9].
[48] Parties VCLT.
[49] Parties Genocide Convention.
[50] Art. L. 231-3 French Environmental Code; Art. 394 Armenia Criminal Code; Art. 131 Belarus Criminal Code; Art. 409 Georgia Criminal Code.
[51] Cartagena Protocol.

41. Thus, there is neither a uniform, nor an extensive State practice to support the application of environmental crimes to crimes against humanity.

42. Consequently, crimes against the environment are not punishable under customary international law.

b. In any Case, the Release of the Bioengineered Bugs does not fall within the Scope of the "No-Harm-Rule"

43. Even presuming there was a violation of customary international law, the Court could only refer to the vague "no-harm-rule". Nonetheless, the conduct does not fall within the scope of the "no-harm-rule". The "no-harm-rule" refers to the obligation of States to prevent the causation of significant transboundary harm to another State by any human activity.[52]

44. Firstly, the conduct was not carried out by a "State". As shown above (*mn.* 16), OBA cannot be attributed to Regale, and not even to the private corporation Karaxis. Consequently, the conduct was not carried out by a "State".

45. Secondly, the harm was not "transboundary". "Transboundary" refers to activities which originate within the territory of one State and result in the environmental harm of another State.[53] Hence, it is the boundary-crossing element which initiates application of international law.[54] The origin of this element lies in the principle that States are not to use their own property in such a way that they injure other people (*sic utere tuo ut alienum non laedas*).[55]

46. In the present case, Karaxis personnel allegedly conducted the aerial release of bioengineered insects on the Giskar side of the Cascading River (Appendix 3 [6]). Thus, the environmental harm did not arise from intraterritorial activities within Regale's own territory, but solely arose in the territory of Giskar. Subsequently, the environmental harm did not originate from the territory of Regale and therefore was not "transboundary".

47. Consequently, the release of the bioengineered bugs does not fall within the scope of the "no-harm-rule".

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[52] As reflected, e.g., in: Art. 1(2) Water Convention; Art. 7 CLNNUIW; ILC UN Doc A/CN.4/SER.A/2001/Add.1 (Part 2), [98], Art. 3.
[53] ILC UN Doc A/CN.4/SER.A/2001/Add.1 (Part 2), [97], Art. 2(c); Schachter (1991) 463.
[54] Hanqin (2003), p. 9.
[55] Jervan (2014) 1; Handl (1975) 52-53.

iii. Even if the Alleged Acts constitute a Violation of Customary International Law, the Acts are Not of a Similar Character to the Other Acts set forth in Art. 7(1) RS

48. Even if the alleged acts constitute a violation of customary international law, they do not meet the requirements of Art. 7(1)(k) RS, since the alleged acts are not of similar nature and gravity to the other acts referred to in Art. 7(1) RS.

49. The crimes enumerated in Art. 7(1)(a)-(j) RS all share the common characteristic of being acts where the primary target is a human being, whilst in the present matter, the environment is the main target (Appendix 3 [6]). Solely "extermination" in Art. 7(1)(b) RS can be committed through depriving individuals of the conditions of life. Nonetheless, the crime of extermination requires an individual to intentionally eradicate the existence of a particular group.[56] In the present case however, the Defendant did not have any intention to eradicate the population of the Golden Lowlands. Thus, the alleged acts are also not of a similar nature to extermination under Art. 7(1)(b) RS.

50. Furthermore, in their gravity, Art. 7(1)(a)-(j) RS are reserved for atrocity violence.[57] As set out in the Preamble of the RS, the Court only sanctions the most serious crimes of international concern. Thus, international criminal law remains anthropocentric and its goals and remedies do not coincide with environmental preservation.[58] Additionally, the other crimes enumerated in Art. 7(1)(a)-(j) RS, such as murder, torture or rape, represent direct, violent attacks that immediately result in physical and psychological harm of a human being. In contrast, environmental crimes only cause direct damage to the environment, they are however not directly linked to human suffering *per se* and can therefore not be characterized as being "atrociously violent". As the Court held in *Tadić*, the gravity of crimes against humanity "shock of the conscience of mankind", resulting from a deliberate attack against the civilian population.[59] Thus, the crimes enumerated in Art. 7(1)(a)-(j) RS are reserved for actions whose results are grave to humankind and not grave to the natural environment.[60]

51. Therefore, the nature and gravity of the alleged acts is not of similar nature and gravity to the other crimes enumerated in Art. 7(1)(a)-(j) RS.

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[56] *Krstić* Judgement [493].
[57] Stahn (2019), p. 416.
[58] Cusato (2017) 506.
[59] *Tadić* Appeal [57]; Wagner (2003) 437.
[60] Patel (2016) 192.

B. In any Case, there was No Attack against a Civilian Population, neither Committed by an Organization, nor pursuant to or in furtherance of a State Policy

52. According to Art. (1), (2)(a) RS, there must be an attack directed against a civilian population. The aforementioned requirements are not fulfilled since firstly, **(i.)** OBA was not conducted by an organization. Secondly, **(ii.)** OBA was not conducted pursuant to or in furtherance of a State policy. Lastly, **(iii.)** the attack was not directed against a civilian population.

i. OBA was Not conducted by an Organization

53. OBA was not conducted by an organization. Factors to identify whether the group qualifies as an organization include *inter alia*, an established hierarchy, control over a territory, the primary purpose of committing criminal activities or the articulation of an intention to attack a civilian population.[61]

54. Firstly, there was no hierarchy. Supposedly, OBA was independently conceived and implemented by the Defendant (Case [7], Appendix 3 [5]). Thus, OBA was a self-governed, internal sub-divisional operation, that was isolated from the external hierarchical structures of Karaxis (*mn.* 16). OBA was therefore not implemented by a hierarchical structure, but much more by an autonomous individual. Furthermore, Karaxis did not exercise control over any part of the territory of Regale. Additionally, the primary purpose of Karaxis revolves around the genetic engineering of pest resistant crops (Appendix 3 [4]), and does not encompass criminal activities. Lastly, the Defendant kept the creation of the bioengineered insects secret (Case [3]). Thus, Karaxis could not have articulated an intention to attack a civilian population.

55. Therefore, OBA was not conducted by an organization.

ii. OBA was Not conducted pursuant to or in furtherance of a State Policy

56. Pursuant to Art. 7(Introduction)(3)(fn. 6) EoC, the existence of a State policy cannot be inferred solely from the absence of governmental or organizational action. As illustrated above (*mn.* 16), Regale did not have any knowledge, let alone control over OBA. Thus, OBA was not conducted by Regale.

[61] *Muthaura et al.* Document [63].

57. Consequently, OBA was neither committed by an organization, nor pursuant to or in furtherance of a State policy, as the attack can neither be attributed to Karaxis, nor Regale.

iii. OBA was Not directed Against a Civilian Population

58. The attack was not directed against a civilian population. Pursuant to Art. 7(1) RS, the acts of the accused must be part of an attack directed against any civilian population. "Directed against" requires that the civilian population is the primary, rather than the incidental object of the attack.[62]

59. OBA supposedly involved a twofold plan: in order to induce the people of the Golden Lowlands to vote to secede from Giskar (Appendix 3 [6]), OBA was implemented to significantly suppress farm output in the agriculture of the Golden Lowlands (Appendix 3 [6]). Thus, the primary target was not the civilian population, but rather the agriculture of the Golden Lowlands. Additionally, the bugs utilizied by OBA were bioengineered to attack plants, not humans (Appendix 3 [4]). Therefore, the primary object of the attack was the agricultural area of the Golden Lowlands. The effects on the civilian population, however, were ultimately an incidental, secondary effect, resulting from the initial attack on the agricultural area. Therefore, the attack was not directed against a civilian population.

60. Consequently, there was no attack directed against a civilian population, pursuant to or in furtherance of a State or organizational policy.

III. THE PRESENTED EVIDENCE IS NOT SUFFICIENT TO CONFIRM CHARGES PURSUANT TO ART. 61(7)(A) RS

61. The IIM report is not sufficient to confirm the charges, since **(A.)** it is inadmissible before this Court according to Art. 69(7) RS. Even if the IIM report was admissible, **(B.)** it would not establish the required evidential threshold pursuant to Art. 61(7)(a) RS.

A. The IIM Report is Inadmissible according to Art. 69(7) RS

62. The IIM report is inadmissible pursuant to Art. 69(7) RS, since **(i.)** it has been obtained in violation of Art. 54(3)(c) RS and **(ii.)** its admission is antithetical to and seriously damages the integrity of the proceedings pursuant to Art. 69(7)(b) RS. Art. 69 RS is applicable to the Confirmation of Charges stage by virtue of Rule 63(1) RPE.

[62] *Blaškić* Appeal [105]; *Kordić/Čerkez* Judgement [173]; Eboe-Osuji (2008) 125.

i. The IIM Report has been Obtained in Violation of Art. 54(3)(c) RS

63. According to Art. 69(7) RS, evidence which has been obtained by means of a violation of the RS shall not be admissible. Pursuant to Art. 54(3)(c) RS, the Prosecutor may seek the cooperation with any State or intergovernmental organization in accordance with its respective competence and/or mandate for the purpose of investigation.

64. The UNGA acted outside its mandate when creating the IIM. Pursuant to Art. 22 UN-Charter, the UNGA may establish subsidiary organs which it deems necessary for the performance of its own functions. The subsidiary organs are therefore limited by the functions of the UNGA. According to Art. 11(2), 14 UN-Charter, the UNGA may recommend measures with regard to the maintenance of international peace and security and for the peaceful adjustment of any situation. These recommendations are non-binding in nature.[63] According to UNGA Res. 377(V)[64], the UNGA shall consider a matter immediately and make appropriate recommendations to Members for collective measures, if the UNSC fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to peace. However, this resolution cannot supersede the balance of competences within the UN-Charter.[65] The UNGA does not have adjudicative powers, which includes prosecutorial tasks.[66] Pursuant to Art. 11(2) UN-Charter, recommendations for which "action" is required, only fall within the competence of the UNSC. "Action" refers, *inter alia,* to action of the UNSC under Chapter VII UN-Charter with respect to threats to peace or breaches of peace.[67] The UNGA is therefore strictly limited to making non-binding recommendations and cannot take action that falls within Chapter VII UN-Charter.

65. Pursuant to UNGA Res. ES-11/2, creating the IIM, the mechanism has the mandate to "collect and analyse evidence […], prepare case files and draft indictments for prosecution before the [Court]" (Appendix 3 [1]). The mandate further provides that "all States are to cooperate fully with the [IIM]" (Appendix 3 [1]). "Are to" is mandatory in its meaning,[68] thus, according to the wording of UNGA Res. ES-11/2, the mandate of the IIM is binding. The binding character of the mandate can also be inferred from the deviating wording of

[63] *South West Africa Case* [97]; *Legality of the Threat or Use of Nuclear Weapons* [70]; Klein/Schmahl in Simma et al. (2012), Art. 10 [47].
[64] UNGA Res. 377(V).
[65] Kelsen (1951), p. 960; Talmon (2014) 125.
[66] Khan in Simma et al. (2012), Art. 22 [28].
[67] *Certain Expenses* [165].
[68] "To be" in Oxford Dictionary (2023) [18].

previous recommendations. UNGA resolutions usually "call upon"[69] or "urge"[70] the countries involved to cooperate with the established mechanism. To "call upon" is merely a request or a demand to act in a certain way.[71] Considering this background, the expression of "are to cooperate", as used in UNGA Res. ES-11/2, is a conscious deviation from the usual terminology utilized by UNGA resolutions, indicating a binding legal meaning. Furthermore, Giskar cited its "obligation under ES-11/2" when submitting their documents to the IIM (Appendix 3 [5]), suggesting that it understands the IIM's mandate to be obligatory in nature.

66. Although the IIM merely has an assisting function, as provided for in its name, "to Assist" (Appendix 3 [1]), its mandate provides a basis upon which prosecutorial measures, such as the drafting of indictments or the creation of case files, can be addressed by the IIM itself. Additionally, the IIM report legally assessed that the alleged actions of the Defendant shall be classified as "ecocide" under Art. 7(1)(k) RS (Appendix 3 [11]), which was later identically adopted by the Prosecutor in the charges (Case [9]). The IIM's evaluation can therefore be characterized as prosecutorial. In addition, the IIM will provide its case files and draft indictments to "facilitate [the] prosecution" of the crime (Appendix 3 [12]). Given the lack of effort on behalf of the Prosecutor, it is likely that it will adopt it. The IIM is therefore indirectly taking over the prosecutorial functions of the Prosecutor. Due to its binding and prosecutorial character, UNGA Res. ES-11/2 goes beyond stipulating simple recommendations, whereby the UNGA acted within the Chapter VII UN-Charter competence of the UNSC, and therefore *ultra vires* when creating the IIM.

67. Since the Prosecutor obtained the evidence by its cooperation with the IIM, the report has been obtained by means of a violation of Art. 54(3)(c) RS and therefore in violation of the RS pursuant to Art. 69(7) RS.

ii. The Admission of the IIM Report is Antithetical to and Seriously Damages the Integrity of the Proceedings according to Art. 69(7)(b) RS

68. The admission of the evidence is also antithetical to and seriously damages the "integrity of the proceedings" pursuant to Art. 69(7)(b) RS.

69. The underlying rationale of Art. 69(7) RS is to uphold the rule of law.[72] In order to assess the antithetical and seriously damaging character of an admission of evidence, the core

[69] UNGA Res. 71/248 [6]; UNGA HCR Res. 47/21 [12]; UNGA HCR Res. 49/1 [13].
[70] UNGA HCR Res. 49/26 [13].
[71] "Call upon" in Merriam-Webster Dictionary (2023).
[72] Broomhall (2003), p. 1; Piragoff and Clark in Ambos (2022), Art. 69 [91].

values of the RS must be balanced.[73] These values include, *inter alia*, respect for the sovereignty of States, respect for the rights of the person and the effective prosecution and punishment of crimes within the Court's jurisdiction.[74] By admitting the IIM report, both the respect for the sovereignty of States and the rights of the accused are violated.

70. Firstly, the admission of the IIM report is antithetical to the respect of State sovereignty. State sovereignty is an elementary part of the RS.[75] Cooperation of third States with the Court and Prosecutor is consent based.[76] Regale rejected cooperation with the Court and Prosecutor (Case [8]). By using the binding IIM (*mn.* 65) to investigate on the territory of the Golden Lowlands, the Prosecutor effectively circumvents the required consent and directly infringes upon the sovereign decision of Regale. Thus, the use of evidence collected by an illegitimate UN mechanism would oppose the rule of law. Consequently, the core value of respect of State sovereignty is violated.

71. Secondly, the admission of the IIM report violates both the Defendant's right to challenge the evidence pursuant to Art. 61(6)(b) RS, as well as his right to cross-examine witnesses at trial pursuant to Art. 67(1)(e) RS.

72. The Defendant's right to challenge the evidence pursuant to Art. 61(6)(b) RS is violated by the admission of summary evidence. Pursuant to Art. 61(5) RS, the Prosecutor may rely on a summary of evidence or information under Art. 68(5) RS. The primary purpose of Art 61(5) RS is the protection of witnesses.[77] Whether the admission of summary evidence is prejudicial to the rights of the accused is evaluated on a case-by-case basis.[78] The use of summary evidence can affect the ability of the Defendant to challenge the evidence pursuant to Art. 61(6)(b) RS. This limitation must be counterbalanced by the judicial authorities, in order for the evidence to be permissible.[79] The IIM report constitutes summary evidence (Appendix 3 [1]). To begin with, the Prosecutor relied on the IIM report as summary evidence not for witness protection measures, but due to lack of an own proper investigation and the disappearance of Kole. Furthermore, the IIM merely summarizes two sources, namely the information of Kole which Giskar provided and the observations by the IIM staff itself (Appendix 3 [6, 7]). The information provided by Kole consists of multiple

[73] Piragoff/Clark in Ambos (2022), Art. 69 [91]; *Gicheru* Request [59].
[74] *Gicheru* Request [59].
[75] Piragoff/Clark in Ambos (2022), Art. 69 [91] with reference to Trapp and Lonsdale, *Excluding Evidence, The Timing of a Remedy* (unpublished manuscript, McGill University 1998).
[76] Kreß/Prost in Ambos (2022), Art. 86 [31].
[77] *Lubanga* Appeal [44].
[78] *Katanga/Ngudjolo* Charges [51]; *Mbarushimana* Judgment [47].
[79] *Lubanga* Judgment [51]; *Doorson v. Netherlands* [72].

documents, including notes of alleged conversations she had with the Defendant (Appendix 3 [5]). In its summary, the IIM only clarifies which information it summarizes, without providing excerpts of the primary sources (Appendix 3 [6, 7]). Thus, the Defendant is hindered from obtaining full access to the IIM report, which subsequently makes it impossible to properly evaluate the evidence. Therefore, the Defendant's right to challenge the evidence under Art. 61(6)(b) RS is violated.

73. Moreover, Art. 67(1)(e) RS provides that the Defendant can examine the witnesses against him. This provision enshrines the respective human right, stipulated in Art. 10 UDHR[80] and further defined by Art. 14(2)(e) ICCPR[81] and Art. 6(3)(d) ECHR[82]. Although the Prosecutor must not, under Art. 61(5) RS, call witnesses which are expected to testify at trial during the confirmation hearing, the ECtHR's jurisprudence stipulates that the cross-examination must take place at some point in the proceedings.[83] The cross-examination of the person who provided the summarized information is essential in evaluating the evidence at trial.[84] Given that the information of Kole is the only incriminating evidence and additionally low in probative value (*mn*. 81), its reliability must be properly proven at trial in order to pass the evidentiary threshold. Since Kole has gone missing (Appendix 3 [5]), it can be presumed that a cross-examination at the time of trial will not be possible. The admission of the IIM report would therefore simultaneously result in a violation of Art. 67(1)(e) RS. Thereby, the "filter function" of the confirmations hearing is disregarded,[85] since the presented evidence would not hold up at trial. Art. 61(6)(b) and 67(1)(e) RS are therefore violated by the admission of the evidence.

74. Considering the limited disclosed evidence upon which the alleged guilt is based on, the effective punishment of those guilty of grave crimes is outweighed by the violations of the core values. The admission of the IIM report would therefore be antithetical to and seriously damage the integrity of the proceedings.

75. In conclusion, the IIM report is inadmissible pursuant to Art. 69(7) RS.

[80] UDHR.
[81] ICCPR.
[82] ECHR.
[83] *Unterpertinger v. Austria,* [31]; *Kostovski v. Netherlands* [41-43].
[84] *Milošević* Admissibilty [22].
[85] *Mbarushimana* Judgment [47]; *Al Mahdi* Charges [17].

B. Even if the IIM Report was Admissible, it would Not Establish the Required Evidential Threshold pursuant to Art. 61(7)(a) RS

76. Even if the IIM report was admissible, it would not fulfill the evidentiary threshold applicable during the confirmation of charges. Article 61(7) RS requires sufficient evidence to establish "substantial grounds to believe" that the person committed the crimes charged. "Substantial grounds" means that the Prosecutor must offer concrete and tangible proof supporting the specific allegations.[86] After evaluating all evidence, the Chamber must be satisfied that the allegations are sufficiently strong to justify committing the accused to trial.[87] For this purpose, the probative value of the presented evidence must be considered.[88] Key elements for assessing the probative value of evidence are reliability and credibility.[89]

77. The IIM report cannot establish "substantial grounds to believe", since **(i.)** the summary of Kole's information and **(ii.)** the IIM's own observations are of low probative value.

i. The Summary of Kole's information is of Low Probative Value

78. The summary of Kole's information is of low probative value as it is neither reliable, nor credible.

79. Firstly, the summary of Kole's information is not reliable. Reliability refers to the accuracy of evidence.[90] Authentic documents can still be unreliable.[91] The summarized information of Kole is the only source which may link the Defendant to the alleged crimes in the Golden Lowlands (Appendix 3 [6]). This information was provided to the IIM by Giskar, which in turn received its information from Kole (Appendix 3 [5]). The Prosecutor fully relies on the IIM's investigation to underpin its allegations, without being in possession of the underlying documents itself (Appendix 3 [12]). The Prosecutor can therefore neither confirm the summarized evidence nor pledge for its reliability. The fact that the IIM itself attested the authenticity of the documents submitted by Giskar (Appendix 3 [5]), can be no proof of its reliability. Therefore, the summary of Kole's information is not reliable.

80. Secondly, the summary of Kole's information is not credible since it only encompasses an uncorroborated summary of evidence. Evidence is credible when there is reason to believe

[86] *Lubanga* Charges [39]; *Muthaura et al.* Charges [52]; *Katanga/Ngudjolo* Charges [65].
[87] *Lubanga* Confirmation [39].
[88] *Katanga/Ngudjolo* Charges [63]; *Bemba* Charges [60].
[89] *Ruto et al.* Charges [69].
[90] *Kunarac et al.* Acquittal [7].
[91] *Lubanga* Appeal [109]; *Ngdujolo* Judgement [55]; *Katanga* Judgment [89].

the evidence.[92] Summary evidence is low in probative value if not corroborated by other evidence, as the Defense cannot properly challenge the evidence.[93] The IIM's observations can solely corroborate the fact that 65% of farmland in the Golden Lowlands has been destroyed within the same period Kole indicated (*mn.* 83). Nevertheless, the fact that Kole's information is consistent with the IIM's observations does not allow any conclusions to be drawn about the credibility of the evidence, since a destruction of this scale may be observed by anyone in the region. The credibility of the evidence can therefore not be sufficiently evaluated given the limited indicia of the summary. Therefore, the summary of Kole's information is not credible.

81. Overall, the summarized information of Kole is of low probative value.

ii. The IIM's Observations are of Low Probative Value

82. Direct evidence is first-hand information and is considered to have a higher probative value than indirect evidence,[94] which is second-hand information. [95] However, the relevance of the information must still individually be assessed. "Relevance" requires a nexus between the specific piece of evidence and a charge or fact of the case to be proven.[96]

83. The IIM's observations were conducted by its own staff (Appendix 3 [7]). The summary of their findings can be considered first-hand information and therefore direct evidence. The IIM staff only observed the destruction of 65% of the farmland in the Golden Lowlands by bugs, while there was virtually no damage to the crops of Regale on the other side of the Cascading River (Appendix 3 [7]). This observation can only corroborate destruction of farmland which Kole's information likewise indicated. Why there were no damages to Regale's crops, on the other hand, cannot be properly corroborated. Since Karaxis is one of the most successful biotechnology companies of the world (Case [3]), it can be reasonably concluded that the farmers of Regale had more effective measures and infrastructure against an insect surge. These diverging effects could therefore very well be a result of the difference in technology available to the farmers. Furthermore, the fact that Karaxis has not shared its technology prior to the Merger Agreement with Regale, could be attributed to economic efficiency or other managerial decisions. This, however, cannot prove any wrongdoing of Karaxis, let alone the Defendant. The IIM's observations are therefore only

[92] *Kunarac et al.* Acquittal [7].
[93] *Katanga/Ngudjolo* Charges [159]; *Bemba* Charges [50]; *Abu Garda* Charges [52]; *Ruto et al.* Charges [78, 297]; *Yekatom et al.* Decision [23].
[94] *Gbagbo* Victims Response [108].
[95] Stahn (2019), p. 285.
[96] *Bemba* Charges [41].

corroborating a circumstantial element of facts and can neither confirm the existence of OBA, nor, even more importantly, the involvement of the Defendant in the alleged operation. The IIM's observations therefore lack the required relevance. Consequently, the IIM observations are of low probative value.

84. Overall, the IIM report's summary of information cannot establish "substantial grounds to believe" pursuant to Art. 61(7)(a) RS. The Prosecutor is therefore unable to sufficiently underpin the allegation that the Defendant committed crimes pursuant to Art. 7(1)(k) RS.

85. In conclusion, PTC VI erred in confirming the charges against the Defendant.

SUBMISSIONS

The Defense respectfully requests the Chamber to reverse the impugned Decision of the PTC and to adjudge and declare that:

1. The PTC erred in holding that the State of Giskar's acceptance of jurisdiction concerning international crimes committed in the region of the Golden Lowlands was valid given that the territory was no longer part of Giskar at the time it lodged its Art. 12(3) RS declaration with the Registrar.

2. The PTC erred in holding that it had subject matter jurisdiction in this case under Art. 7(1)(k) of the RS.

3. The PTC erred in holding that there was sufficient evidence to confirm charges against the Defendant based solely on the 20 April 2022 Report of the International Investigative Commission whose legitimacy has been challenged by the UN Under-Secretary-General for Legal Affairs.

Respectfully submitted,

COUNSEL FOR THE DEFENSE

On behalf of Corlis Valeron